

**REMARKS**

The present Amendment is in response to the Official Action dated October 18, 2011 ("the Action") and the Examiner interview dated January 6, 2012, as evidenced by the Applicant-Initiated Interview Summary dated January 9, 2012. Claims 1 and 12 have been amended, claim 15 has been canceled, and no claims have been added herein. No new matter has been added as neither the drawings nor the specification have been amended. Claims 1, 3-5, 7, 12, and 13 remain pending in the present application.

In the Action, the Examiner has rejected certain of the pending claims under § 112 on new grounds, asserting that the simultaneous recitations in claim 1 of the "distal end of the shaft bending in a direction . . . relative to . . . the shaft" and the "at least one of the two prongs . . . extending away from the longitudinal axis of the shaft" are not clear. In response, Applicants have amended claim 1 to recite that the at least one prong extending away from the longitudinal axis extends in a direction relative to the longitudinal axis of the shaft and have deleted the directional feature of the distal end as a whole. Such an amendment is fully supported by at least paragraph [0132] of the specification as filed.

Further in the Action, the Examiner maintained his previous rejections under § 102 and additionally set forth rejections under § 103(a). In particular, the Examiner set forth the following rejections:

- Claims 1, 3-5, 7, and 15 under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a) as being obvious over U.S. Pat. No. 1,425,845 to Foster ("Foster") as evidenced by U.S. Pat. No. 2,546,287 to Zelgert ("Zelgert"); and

- Claims 12 and 13 under 35 U.S.C. § 103(a) as being unpatentable over Foster (as evidenced with Zelgert) in view of U.S. Pat. No. 4,566,466 to Ripple et al. ("Ripple").

Notably, the Examiner commented in the Action that the previously presented claims did not assert that "the prong extending or bending away has a fixed position or is immovable relative to the shaft." In response, Applicants' undersigned counsel conducted the aforementioned interview with the Examiner in which various proposed claim amendments were discussed. Applicants initially wish to thank the Examiner for taking the time to conduct this interview. As noted in the Interview Summary, the Examiner agreed that reciting in independent claims 1 and 12 that the prong that extends away from the longitudinal axis of the shaft is immovable relative to the shaft would overcome the currently pending rejections as none of the references cited in the Action teach such a feature. Notwithstanding this distinguishing feature, Applicants have amended the independent claims to recite that the "two prongs" or the "first and second prongs" are immovable relative to the shaft. Applicants respectfully assert that Figures 5j-5o of the present application illustrate the prong extending away from the shaft being in a fixed position relative to the shaft and do not show any pins or pivot pins about which the prong could move relative to the shaft. Furthermore, paragraph [0132] of the specification indicates that "the pins are spaced so that they simultaneously each fit into a respective one of the two adjacent holes in the baseplate of the static trial or artificial intervertebral disc." To be spaced in this manner, the pins must be located on prongs that are immovable relative to one another. Thus, such an amendment is supported by the

specification as originally filed and, accordingly, Applicants have added this feature to each of the independent claims.

Additionally, in response to the Examiner's objection during the interview to the use of the word "coupled" in claims 1 and 12, Applicants have further amended these claims to recite that the pins extend from each of the two prongs. In light of each of these claim amendments, Applicants respectfully request that the rejections under §§ 102 and 103 and the objection noted in the interview be withdrawn.

Although some claims have not been discussed fully herein, Applicants respectfully submit that such claims are also not rendered obvious in view of the prior art cited in the Action by virtue of their dependence from either of independent claims 1 and 12, or an intervening claim of these independent claims. Moreover, such claims may in and of themselves include subject matter even more clearly not taught by the prior art of record and Applicants reserve the right to argue such at a later date, if necessary.

As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

Application No.: 10/784,598

Docket No.: SPINE 3.0-437 PPPPPPC III

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 18, 2012

Respectfully submitted,

Electronic signature:

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